IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1202 OF 2007

Shri.Mahendra Jagdish Agarwal. ..Petitioner.

Versus

The State of Maharashtra
and Anr. ..Respondents.

..

Mr.Bhavesh Parmar, Adv. for the Petitioner.

Mr.V.B.Konde-Deshmukh, APP, for the State.

..

CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATED : SEPTEMBER 13, 2007.

P.C.:-

1. Heard.

2. The petitioner challenges the order dated 20th March, 2007 passed by the Maharashtra State Human Rights Commission in Case No.1267/2006-07. The complainant-petitioner has been informed by the said order that, the matter relates to civil dispute, such as property rights and contractual obligations and, therefore, the proceedings before the Commission have been closed.

3. Upon hearing the learned Advocate appearing for the petitioner and on perusing the record, it is seen that the complaint filed by the petitioner before the Maharashtra State Human Rights Commission on 20th February, 2007 essentially related to grievance of the petitioner that he was improperly and illegally booked by the police authorities under the provisions of Maharashtra Control of Organised Crimes Act and further in relation to certain civil disputes regarding the properties. Infact, the violation of human rights alleged in the complaint have been summarised by the petitioner in the said complaint as under :-

> "(a) Whether it was correct on the part of the police to mechanically arrest our client on 5.7.2006 in C.R. No.53 of 2006 under the stringent provisions of MCOCA when the first informant's information on facts against our client was absolutely untrue and baseless i.e. in the 2nd week of June, 2006 when

the first informant was threatened in the office of M/s. Vertex Warehousing and Construction Pvt. Ltd. wherein our client is a Director, our client was not present in India from the period 28.5.2006 till 29.6.2006.

(b) Whether it was correct on the part of the police to keep our client in police and judicial custody for a period approximately 65 days i.e. from the date of the arrest (5.7.2006) till the date of his release on bail on (7.9.2006), when there was prima facie material available before the police which clearly suggested that the first informant in C.R. No.53 of 2006 was trying to use the police machinery to coerce our client into giving up the development of the said property in favour of the first informant.

(c) Whether it was correct on the part of the police to ignore the fact that M/s. Vertex Warehousing and Construction Pvt. Ltd. wherein our client is a Director had taken various steps for protection of its property which the first informant and local politicians were trying to grab. Why were the letters and orders obtained by M/s. Vertex Warehousing and Construction Pvt.Ltd. wherein our client is a Director ignored which clearly showed that the first informant in C.R. No.53 of 2006 was himself carrying out threats of mischief on the said property owned by M/s. Vertex Warehousing and Construction Pvt. Ltd. wherein our client is a Director.

(d) Whether it was correct on the part of the police to ignore the fact

that pending the arrest of our client from 5.7.2006 till 7.9.2006 alongwith other directors of M/s. Vertex Warehousing and Construction Pvt. Ltd. wherein our client is a Director, the first information of C.R. No.53 of 2006 taking wrongful advantage of the factual position had made an application to the SRA authorities on 21.7.2006 seeking acquisition of the said property in its favour for redevelopment of the said property which belongs to M/s. Vertex Warehousing and Construction Pvt. Ltd. wherein our client is a Director.

(e) Whether it was correct on the part of the police officers named in the present complaint who time and again suggested to our client to withdraw from the development of the said property in favour of the first informant, local politicians

and M/s. Santosh Enterprises (Builders / Developers) to avoid being prosecuted under the stringent law of MCOCA."

. It was further stated in the complaint as under :-

. In view of the aforesaid facts and circumstances narrated hereinabove it is abundantly clear that the first informant in C.R. No.53 of 2006 Mr.Brijlal Tiwari with malafide intentions and in conspiracy and collusion with local politicians who are part of the present State Government and M/s. Santosh Enterprises (Builders / Developers) have misused the police machinery for personal gains at the cost and consequences of our client."

4. The above averments in the complaint

apparently disclose that though there was a grievance made against the police authorities for having booked the petitioner under the provisions of the Maharashtra Control of Organised Crimes Act, the complaint essentially relates to civil dispute of the petitioner with other persons named in the complaint, and that having been noted by the Commission, it has closed the proceedings.

5. It was sought to be contended on behalf of the petitioner that the only provision under which the complaint could have been rejected was under Section 36 of the Protection of Human Rights Act, 1993 and there is no other provision which would empower the Commission to reject the said complaint. Section 36(1) of the Protection of Human Rights Act, 1993 (hereinafter referred to as the said Act, for brevity) provides that, the Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. Sub-section (2) thereof provides that, the Commission or the

State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. Apparently, Section 36 relates the bar provided for inquiry into the matter by the Commission. It does not deal with the power of the Commission to reject the complaint. Section 10 of the said Act provides that, the Commission shall meet at such time and place as the Chairperson may think fit, and the Commission shall regulate its own procedure. Being so, as far as the procedure to be followed by the Commission is concerned, undoubtedly, there are regulations to be framed by the Commission for disposal of the complaints. It is the contention on behalf of the petitioner that no such regulations have been duly published and notified in accordance with the provisions of law and, therefore, merely by referring to Regulation 8(d) of the Maharashtra State Human Rights Commission, (Procedure) Regulations, 2001, the Commission could not have rejected the complaint.

6. Even assuming that the Commission has wrongly referred to the provisions of regulation which are yet to be notified, that itself cannot not preclude the Commission from dealing with the complaint filed before the Commission. So also, that itself cannot preclude the Commission from disposing of the matters, particularly, in view of the provisions comprised under Section 10 of the said Act. Besides, mere reference to wrong provisions of law that itself cannot vitiate any order passed by such an authority. Once the complaint is filed before the Commission, the Commission has to bear in mind the provisions of Section 12 of the said Act while dealing with such complaint.

7. Section 12(a) of the said Act, clearly empowers the Commission to inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of - (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant. If on the basis

of the facts disclosed in the complaint, the Commission is able to arrive at a conclusion that the complaint is merely relating to a civil dispute and it does not disclose violation of any human rights, nothing would prevent the Commission from rejecting such complaint. Drawing our attention to Section 12(b) of the said Act, it was sought to be contended on behalf of the petitioner that the Commission can even intervene in any proceeding involving any allegation of violation of human rights pending before a court. It is sought to be contended that the petitioner has alleged violation of human rights on account of the petitioner being booked under the Maharashtra Control of Organised Crimes Act by the police authorities. Merely because the petitioner has been booked under the Maharashtra Control of Organised Crimes Act that itself cannot lead to conclusion that there is violation of human rights. Undisputedly, the charge-sheet has been filed and the concerned Court is seized with the matter. It will for the competent Court to decide whether the petitioner has been illegally

booked under the Maharashtra Control of Organised Crimes Act or not and consider the same. It will be too premature for the Human Rights Commission to intervene in the matter. Besides, Section 12(b) of the said Act does not empower the Commission to intervene the Court before which the proceedings are initiated. The said provision merely provides that the Commission shall intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

8. It was sought to be argued on behalf of the petitioner referring to Section 40(B) of the Protection of Human Rights (Amendment) Act, 2006 (No.43 of 2006), that the regulations framed by the Commission as regards the procedure to be followed for disposal of the complaint should be notified and in the absence of notification the regulation would be bad. Section 40(B)(1) provides that, subject to the provisions of this Act and the rules made thereunder, the Commission may, with the previous approval of

the Central Government, by notification, make regulations to carry out the provisions of this Act. Sub-section (2) thereof provides that, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:- (a) the procedure to be followed by the Commission under sub-section (2) of section 10; (b) the returns and statistics to be furnished by the State Commissions; and (c) any other matter which has to be, or may be, specified by regulations. Sub-section (3) thereof provides that, every regulation made by the Commission under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only

in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation." Undoubtedly Section 40B was introduced in the said Act by the Protection of Human Rights (Amendment) Act, 2006 (No.43 of 2006) under Section 18 thereof. Apparently, the provisions incorporated under Section 40(B) requires regulations to be framed and to have the same notified. However, it is to be noted that this provision of law incorporated under Section 40(B) nowhere nullifies or affects the Regulations already framed by the Commission and in force prior to coming into force Section 40(B) of new Act. The impugned order clearly refers to the Regulations framed in the year 2001. The amendment has been incorporated in the year 2006. Exfacie, therefore, it cannot be said that the Regulations of 2001 even assuming that they were not notified in terms of Section 40(B) of the Amended Act, to be totally bad-in-law and/or cannot be relied upon. Therefore, the

contention in this regard which is sought to be raised, is rejected.

9. For the reasons stated above, therefore, no case is made out for interference in the matter in writ jurisdiction. Petition therefore fails and is rejected accordingly.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]